

§ 4.1271 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision of an administrative law judge disposing of a proceeding under §§ 4.1160 through 4.1171, 4.1200 through 4.1205, 4.1260 through 4.1267, 4.1290 through 4.1296, and 4.1350 through 4.1356.

(b) Except in an expedited review proceeding under § 4.1180, or in a suspension or revocation proceeding under § 4.1190, a notice of appeal shall be filed with the Board on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

[43 FR 34386, Aug. 3, 1978, as amended at 59 FR 1489, Jan. 11, 1994]

§ 4.1272 Interlocutory appeals.

(a) If a party has sought certification under § 4.1124, that party may petition the Board for permission to appeal from an interlocutory ruling by an administrative law judge.

(b) A petition under this section shall be in writing and not exceed 10 pages in length.

(c) If the correctness of the ruling sought to be reviewed involves a controlling issue of law the resolution of which will materially advance final disposition of the case, the Board may grant the petition.

(d) Upon granting a petition under this section, the Board may dispense with briefing or issue a briefing schedule.

(e) Unless the Board or the administrative law judge orders otherwise, an interlocutory appeal shall not operate as a stay of further proceedings before the judge.

(f) In deciding an interlocutory appeal, the Board shall confine itself to the issue presented on appeal.

(g) The Board shall promptly decide appeals under this section.

(h) Upon affirmance, reversal or modification of the administrative law judge's interlocutory ruling or order, the jurisdiction of the Board shall terminate, and the case shall be remanded promptly to the administrative law judge for further proceedings.

§ 4.1273 Briefs.

(a) Unless the Board orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice by the appellant that the Board has agreed to exercise discretionary review authority pursuant to § 4.1270 or a notice of appeal is filed.

(b) If any appellant fails to file a timely brief, an appeal under this part may be subject to summary dismissal.

(c) An appellant shall state specifically the rulings to which there is an objection, the reasons for such objections, and the relief requested. The failure to specify a ruling as objectionable may be deemed by the Board as a waiver of objection.

(d) Unless the Board orders otherwise, within 20 days after service of appellant's brief, any other party to the proceeding may file a brief.

(e) If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the Board need not consider the arguments.

(f) Further briefing may take place by permission of the Board.

(g) Unless the Board provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellee's brief shall not exceed 25 typed pages.

§ 4.1274 Remand.

The Board may remand cases if further proceedings are required.

§ 4.1275 Final decisions.

The Board may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order of the administrative law judge.

§ 4.1276 Reconsideration.

(a) A party may move for reconsideration under § 4.21(d); however, the motion shall be filed with the Board within 30 days of the date of the decision.

(b) The filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 61511, Oct. 1, 2002]